

**Submission  
No 11**

## **INQUIRY INTO IMPACT OF GAMBLING**

**Name:** Dr Betty Con Walker

**Date received:** 7/03/2014

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Dr Betty Con Walker

Mob:

Tel:

Fax:

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7 March 2014

Revd the Hon Fred Nile MLC  
Committee Chair  
Select Committee on Gambling  
Legislative Council  
Parliament House  
Macquarie Street  
Sydney NSW 2000

Dear Chair

**SUBMISSION TO SELECT COMMITTEE INQUIRY INTO GAMBLING**

Thank you for the invitation to provide a submission to the Inquiry which is attached.

I would be happy to attend to discuss its contents.

Yours sincerely

**Dr Betty Con Walker**

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Submission to  
Legislative Council Select Committee  
Inquiry into Gambling

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Prepared  
by  
**Dr Betty Con Walker**

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**CENTENNIAL**



**CONSULTANCY**

*Corporate & Government Consultants*

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This submission has been prepared to foster debate about a significant matter of public policy. The author does not have a relationship with any interest group.

## SUMMARY

Policies on gambling - particularly those relating to gaming machines - adopted by various governments over the years have resulted in significant revenues forgone by governments at both the state and federal levels.

This submission focuses mainly on the impact of tax concessions to clubs on government revenues – a matter which falls under ‘h’ of the Inquiry’s Terms of Reference.

Of course, it is acknowledged that many small clubs are genuine mutual clubs whose activities are primarily concerned with sport or other social activities. Some 13% of clubs have no gaming machines while around 52% pay no gaming tax. Essentially, two thirds of NSW clubs pay no tax.

The Cahill Labor Government was prompted to introduce legislation to legalise and control the use of poker machines in not-for-profit clubs in 1956.

By the end of 1956, permission had been granted for clubs to operate some 800 poker machines. More than fifty years later, those numbers had grown to 71,836. The lack of restrictions on numbers (until 2002, and again after December 2008), combined with concessional tax and regulatory treatment, have led to clubs dominating the NSW gaming industry. By 30 June 2009, the number of gaming machines operated in clubs and hotels totalled 95,605 – with clubs operating 75% of the total; and club and hotel gaming profits totalled over \$4,772m – with clubs earning 68% of the total.

This growth in the NSW gaming industry occurred during the incumbency of both Labor and Coalition Governments. Over an extended period, there had been little effort to control the growth in club gaming.

When the NSW Government first allowed the legal operation of poker machines in registered clubs in 1956, clubs were mutual organisations whose profits were ploughed back into the community, and the club for the benefit of members. These arrangements were the genesis of the favourable government policies which prevail to this day.

However, while all the privileges of such clubs have survived the passage of time, the mutuality requirement is now absent from many clubs – particularly the larger clubs. It is apparent that shared interests are no longer a requirement for membership. In fact, the membership of many clubs is open to anyone who walks in off the street.

The absence of restrictions on the number of poker machines in clubs (until 2002, *Gaming Machines Act 2001* and *Gaming Machines Regulation 2002*, and again since December 2008) together with concessional gaming tax have led to exponential growth in the number of poker machines operated and the gaming profits earned.

The very favourable government treatment has resulted in the evolution of a new class of club – the ‘Big Club’ (sometimes called ‘Casino Club’) – variously defined on the basis of the number of poker machines operated. Some of these large clubs operate as many machines as some casinos. The characteristics of these clubs bear little or no resemblance to those of the small mutuals who were entitled to register in 1956 in order to legally install poker machines. The then NSW Colonial Secretary, C.A. Kelly, indicated to Parliament the nature and size of clubs as follows:

The court [Licensing Court] is required to ensure that the club applying for registration must be a body, association or company formed for social, literary, political, sporting, athletic or other lawful purposes. It must consist of no fewer than sixty persons if established within 15 miles of the General Post Office, Sydney, and of not fewer than thirty persons if established elsewhere (*Parliamentary Debates*, 22 August 1956, p. 1753).

The references to 30 or 60 members highlight how the club industry has changed over time, as major clubs now have many thousands of members.

As the Productivity Commission has stated:

The fact that some clubs now have the character of large commercial enterprises raises the question of whether the surpluses earned by the clubs can still be regarded as mutual (1999, p. 21.22).

Hotels were granted the right to deploy a simpler form of gaming machine – Approved Amusement Devices (AADs) – in 1984. In 1997, they were allowed to install poker machines. From the start, the number of machines was limited with a current maximum of 30 poker machines per hotel (*Gaming Machines Act 2001*). Hotels pay significantly higher income and gaming taxes than clubs.

The privileged treatment of clubs – in access to gaming machines and the level of taxes on gaming revenues – is reflected in the current number of gaming machines and the level of gaming profits in NSW and the dominance of the industry by big clubs.

By 30 June 2006, the overwhelming majority of clubs continued to operate fewer than 100 gaming machines. These clubs (numbered 1,153 or 86% of clubs) were operating 33,712 or 45% of gaming machines, and earning 31% of club gaming profits. At the same time, clubs with more than 100 machines numbered 184 or just 14% of clubs and were operating 55% of gaming machines and earning 69% of profits. Within this group, clubs with more than 450 machines numbered 13 or less than 1% of total clubs, and were operating 7,263 or 10% of gaming machines and earning 19% of profits.

Big clubs are also the major beneficiaries of past government decisions (or inaction) whereby clubs receive concessional tax treatments, at both federal and state levels. The effect of these policies is that governments incur ‘costs’ (in the form of forgone revenues). In the case of the Commonwealth, some clubs are fully exempt from income or corporate tax while others only pay tax in

respect of income derived from non-members and investments, net of allowable deductions. This means that, overall, clubs pay very little corporate income tax. The cost to the Commonwealth may be nearly \$200m to \$600m annually. In the case of the NSW Government, the cost is now around \$800m annually. It was only after hotels were also granted the right to operate poker machines in 1997 that public servants could identify the value of the subsidy to clubs *vis à vis* hotels that arose from concessional tax rates – though arguably this only maintained the status quo for clubs (while hotels were to benefit greatly from gaining the right to operate poker machines on their premises).

The question then arises: what corresponding benefits (if any) are derived by the community from this policy of concessional treatment of clubs?

One of the bases on which clubs have been allowed to dominate the gaming industry is that they are regarded as major donors to the community. However, this presumption is not supported by the facts. The net cash contributions of clubs to the community total about \$30m or only less than 1% of their annual gaming profits.

Some have claimed that the NSW Government is increasingly dependent on gaming revenues, but that claim is not supported (or supportable) by evidence. While there has been significant growth in the gambling industry, the analysis shows that while gambling has remained a significant source of government revenue, it has not increased in importance – if anything it has fallen as a proportion of other tax revenues and in comparison to other states. In NSW, total gambling revenues account for 3% of 'total state revenues'.

The role of clubs as election vote winners has not been proven. In fact, experience has shown their minor impact on the electoral process. Similarly, while political donations may have helped to gain access to some politicians, any connection between such donations and government decision-making is highly tenuous.

Whatever the facts may be, the perceptions of politicians may be quite different. For that matter, politics has much to do with the management of perceptions. Interest groups (like the club industry) often do that quite well.

There is a strong case for the NSW Government to modify its gaming tax concessions to the club industry.

It is contended that if concessions to the club industry - now amounting to more than \$800m per annum - were reduced or withdrawn, the moneys raised could be spent by the NSW Government on programs for the benefit of the wider community – such as health, education, or public transport. It is acknowledged that this may well reduce the capacity of the management of the big clubs to spend so much on entertainment, water features and Playboy architecture.

But the full or partial withdrawal of club subsidies would be more effective in promoting the public interest than the current arrangement of poorly-

understood gaming tax concessions. After all governments through their budget processes are better equipped to determine community priorities than club boards.

Possibly some of the revenues raised by reductions in gaming tax concessions could be paid directly to clubs to support direct expenditure on genuine community activities. This would enhance transparency and ensure greater accountability: the payment of subsidies would be disclosed and evaluated as part of the budget process.

The current arrangement for club gaming tax concessions means that the benefits received by the 'Casino Clubs' are out of sight, and apparently, out of mind.



# **SUBMISSION TO LEGISLATIVE COUNCIL SELECT COMMITTEE INQUIRY INTO GAMBLING**

## **1. INTRODUCTION**

Centennial Consultancy welcomes the opportunity provided by the Committee to make a submission on gambling in NSW. The main focus of the submission is the impact on public finances of government gambling policies, particularly as they relate to gaming machines in NSW 'Big Clubs' or 'Casino Clubs'.<sup>1</sup> Accordingly, it mainly addresses the following Terms of Reference:

- (h) Exemptions and exceptions to State and Federal laws and policies relating to gambling
- (m) Any other relevant matters

It examines how the club gaming industry attained its current dominant position in the NSW gaming industry, and some attendant substantial privileges. Accordingly, it details the growth of clubs after the Cahill Labor Government granted them the right to freely operate poker machines in 1956, in the context of a growing gaming industry and its economic significance *per se* and through its contribution to government revenues. It explains the contributions of the policies of the Federal and NSW Governments to this growth, and also details the accumulating costs to government of club tax concessions. Finally, it offers some speculations as to how this came about, during the incumbency of governments from both sides of politics, concluding that the story of the growth of clubs is one that involves both economic and political factors.

First, a brief summary of data on the NSW gambling industry is presented.

## **2. NSW GAMBLING INDUSTRY**

The significance of the NSW gambling industry, with particular reference to gaming machines is shown in Table 1. It presents data on gambling expenditure in NSW and Australia in 2011-12.<sup>2</sup>

Gambling expenditure is the net amount lost or the amount wagered less the amount won, by people who gamble. Conversely, it is the gross profit (or gross

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<sup>1</sup> A more detailed analysis of this and related issues can be found in Betty Con Walker, *Casino Clubs NSW: Profits, tax, sport and politics* (Sydney University Press, 2009).

<sup>2</sup> Other than the financial data published in the Budget papers, this is the latest published NSW gambling data available. An Australian Racing and Gaming Ministers' Conference in 1983 resolved that a consolidation of gambling data be produced annually. This publication has been produced ever since in cooperation with all states and territory governments – until 2004 by the Tasmanian Gaming Commission (TGC) and by the Government Statistician (formerly Office of Economic and Statistical Research), within Queensland Treasury and Trade (formerly Queensland Treasury). The publication differentiates between racing and gaming statistics. Sometimes the racing category includes sports betting and this combination is commonly referred to as wagering. Gaming incorporates all legal forms of gambling other than wagering.

winnings) due to the operators of each form of gambling (Queensland Government, *Australian Gambling Statistics 1986-87 to 2011-12*, 2014, p. 3). In this submission, gambling expenditure is often referred to as gaming profit or gaming machine profit.

Table 1 shows that NSW accounts for 38% of all Australian gambling expenditure but 48% of all gaming machine expenditure on machines in clubs and hotels. Gaming machines in clubs and hotels account for 67% of total NSW gambling expenditure compared with 53% for Australia as a whole. At the same time, NSW accounts for 32% of Australia's resident population aged 18 years and over.

**Table 1: NSW and Australian Gambling Expenditure 2011-12**

	NSW \$m	Australia \$m	NSW/Australia %
Gaming Machines (1)	5,179.488	10,911.186	47.5
% of Total Gambling	66.7%	53.2%	
Other Gaming (2)	1,588.965	6,380.661	24.9
Total Gambling	7,766.438	20,507.296	37.9

1. Data does not include gaming machine data from casinos.

2. 'Gaming' includes all legal forms of gambling other than racing and sports betting, such as lotteries, poker and gaming machines, casino gaming, football pools, interactive gaming and minor gaming (which is the collective name given to raffles, bingo, lucky envelopes and the like). In this table 'other gaming' excludes poker machine expenditure in clubs and hotels which is shown separately as 'gaming machines'.

Source: Queensland Government, *Australian Gambling Statistics 1986-87 to 2011-12*, 2014.

This interstate publication also presents the latest published data on numbers of gaming machines. Table 2 shows that by the end of 2011-12, NSW operated nearly 49% of Australia's gaming machines.

**Table 2: Gaming Machines operating in NSW and Australia 2011-12**

	Casinos	Clubs	Hotels	Total Machines
NSW	1,500	70,746	23,364	95,610
% of Total	11.5%	61.7%	33.9%	48.6%
Australia	13,010	114,702	68,982	196,694

Source: Queensland Government, *Australian Gambling Statistics 1986-87 to 2011-12*, 2014.

Other than the number of gaming machines, the interstate publication does not provide a breakdown of other data such as gaming machine expenditure in the different types of venues – clubs, hotels, and casinos. It is of concern that the data providing just the barest of details on gaming machine expenditure separately by clubs and hotels was last published by the NSW Government for 2008-09.<sup>3</sup>

A few years before, greater transparency was provided through the government publication of detailed data quarterly and annually. Now selected data can only be obtained from the government at a cost – after payment of hundreds of dollars. The table below presents some of that 2009 published data.

<sup>3</sup> The former Department of Gaming and Racing produced three series of publications: *Registered Clubs Quarterly Gaming Analysis*, *Hotels Quarterly Gaming Analysis*, and *New South Wales Gaming Analysis* (the latter an annual publication covering both clubs and hotels). The government stopped publication of that information in 2000, producing instead an irregularly published two or three page fact sheet, *Industry statistics at a glance*, covering the entirety of the department's supervisory functions – reducing references to gaming matters to a handful of dot points.

**Table 3: NSW Gambling Data 2008-09**

	<b>Clubs</b>	<b>Hotels</b>
Venues with GMs	1,301	1,679
Gaming Machines	71,836	23,769
Pre tax Gaming Machine Profit (\$m)	\$3,256m	\$1,516m
State Duty (\$m)	\$636m	\$417m

Source: Office of Liquor Gaming and Racing (OLGR), internet site accessed 15 February 2014.

As noted above, the NSW Budget Papers do publish a breakdown of gambling taxes as well as presenting the cost of the State tax concession provided to clubs. These will be discussed below.

### **3. THE HISTORY: EVOLUTION OF GAMING MACHINES IN NSW**

In order to understand the concessions granted to clubs by successive governments some historical perspective may be helpful.

#### **3.1 Introduction of legalised poker machines to clubs in 1956**

NSW Colonial Secretary, C.A. Kelly, recommended that the *Gaming and Betting Act 1912* be amended to legalise and control the use of poker machines in not-for-profit clubs in the public interest (*NSW Cabinet Papers*, 31 July; 7, 21, and 28 August; 4 September 1956). The *Gaming and Betting (Poker Machines) Bill* was introduced into Parliament on 21 August 1956 (*Parliamentary Debates*, p. 1693). Kelly justified the legalisation of poker machines on the basis that:

they had become a basic feature in the economy of many worthy organisations such as bowling clubs, golf clubs and returned soldiers' clubs (*PD*, p. 1694).

He said that Parliament was confronted with the fact that:

for thirty years these machines have been used in clubs by many thousands of decent, respectable and normally law-abiding citizens without any feelings of guilt or wrongdoing (p. 1695).

And:

The profits of the machines are used not for the personal enrichment of individuals but for the provision of amenities, improvements and conveniences that are an asset to the district (p. 1695).

The *Gaming and Betting Act* was duly amended to authorise the Minister to issue licences for the keeping, use and operation of poker machines on premises of clubs registered under Part X of the *Liquor Act 1912*, or to be registered under the new provisions incorporated in the amended Act. Poker machines kept, used or operated in pursuance of any such licence were to be legalised. No limit was placed on the number of poker machines allowed.

All clubs in possession of a licence were required to pay a licence tax for each machine covered by the licence. This revenue was to be paid into a Treasury special deposits account and transferred to the Hospital Fund at intervals not exceeding three months. Kelly justified the charging of licensing fees on the basis of 'wider community purposes' (p. 1696).

As outlined in the Minister's Second Reading speech, the Licensing Court was to have the responsibility of determining whether a club could be registered and able to operate poker machines. The Minister's speech indicated the size of clubs at that time:

The court [Licensing Court] is required to ensure that the club applying for registration must be a body, association or company formed for social, literary, political, sporting, athletic or other lawful purposes. It must consist of no fewer than sixty persons if established within 15 miles of the General Post Office, Sydney, and of not fewer than thirty persons if established elsewhere (p. 1753).

The references to 30 or 60 members highlight how the club industry has changed over time, as major clubs now have many thousands of members.

Interestingly, members of the Liberal/Country Party Opposition had varying views on the legalisation of poker machines, but did not support the legislation because they believed that the machines would lead to an increase in gambling and because they opposed government revenue raising from them (*PD*, 22 August 1956, pp. 1757, 1773–74, 1894–95).

The *Gaming and Betting (Poker Machines) Act* and the *Gaming and Betting (Poker Machines) Taxation Act* were assented to on 19 September 1956 and gazetted on 28 September 1956. By 11 December 1956, 800 poker machine licences had been issued to clubs (Department of Gaming and Racing, 1999, p. iv).

### **3.2 Growth of NSW club gaming**

Government decisions have contributed greatly to the growing significance of the gambling industry in NSW - major participants of which have been the clubs.

In fact, the growth of the gambling industry is associated with the growth of gaming machine numbers and profits in NSW clubs.

#### ***Machine numbers***

Over more than five decades, the total lack of restrictions on numbers of gaming machines (until 2002 and since December 2008)<sup>4</sup> in clubs led to exponential growth. Since clubs were granted the right to operate gaming machines in 1956, the number of clubs grew by 37%, while the number of machines grew by 1,184%. By 2009, clubs numbered 1,301, and the machines they operated had increased to 71,836.<sup>5</sup> (In 1957, there were 952 clubs and 5,596 machines.)

The number of club machines peaked at 76,432 in 2000. This growth was only halted after three changes. First, the NSW Government introduced a freeze on the number of poker machines in clubs through the *Gambling Legislation Amendment (Gaming Machine Restrictions) Act 2000*. The club freeze applied from 28 March 2000 (and from 19 April 2001 for hotels). (The freeze was lifted in April 2002.) Second, the government imposed a limit of 450 machines and required the *large-scale* clubs – that is, the 18 clubs with machines in excess of

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<sup>4</sup> Although clubs only operate 'poker machines', the term 'gaming machines' includes both poker machines and Approved Amusement Devices (AADs) which are less sophisticated than poker machines and were previously operated by hotels.

<sup>5</sup> As noted above, by 2011-12, clubs operated 70,746 machines

450 machines – to reduce them by a total of 953 over five years commencing 2 April 2002 (*Gaming Machines Act 2001*, section 15A and *Gaming Machines Regulation 2002*, sections 8 and 8A). (This limit was lifted in December 2008.) Third, venues were allowed to trade poker machine entitlements in blocks of two or three with each transfer requiring one of the entitlements to be forfeited to the former Liquor Administration Board (*Gaming Machines Act 2001*, sections 19 to 21A).

**Table 4: Club gaming machines 1957–2009**

Year	Number of clubs	Number of GMs
1957	952	5,596
2009	1,301	71,836
<b>1957–2009 (%)</b>	<b>36.7%</b>	<b>1183.7%</b>

Note: Club gaming machines numbered 70,746 in 2012 according to interstate data (Queensland Government (2014)). On the number of clubs, the ClubsNSW website refers to 'close to 1400' and 'approximately 1,500' (accessed, 4 March 2014).  
Source: Department of Liquor, Gaming and Racing (DGR) (2000) and OLGR (2009).

## Profits

Between 1964 (the first year for which profit figures were published) and 2009, club gaming profits exploded – increasing by 5,327% while the number of clubs was virtually the same (see table 5).

**Table 5: Club gaming profits 1964–2009**

Year	Number of clubs	Profit \$m
1964	1,306	60
1997	1,433	2,259
1998	1,418	2,376
2009	1,301	3,256
<b>1964–2009 (%)</b>	<b>-0.3%</b>	<b>5,327%</b>

Source: DGR (2000), OLGR (2007).

### 3.3 'Big clubs' dominate NSW club gaming

Several 'big clubs' operate as many gaming machines as some casinos. The NSW gaming industry is dominated by 'big clubs' and this dominance has intensified over the years.

In 1996, 89% of clubs were operating fewer than 100 machines each (or 51% of the total number of club machines), and were earning \$783m gaming profits (37% of the total). By 2006,<sup>6</sup> while the overwhelming majority of clubs continued to operate fewer than 100 machines (86%), they operated 45% of club machines, and earned 31% of total profits (see table 6).

<sup>6</sup> This is unpublished data obtained in 2007 from OLGR during research on this topic.

**Table 6: Club gaming machines and profits 1996 and 2006**

Range of GMs	Number of clubs 1996	Number of GMs 1996	GM profits \$m 1996	Number of clubs 2006	Number of GMs 2006	GM profits \$m 2006
≤100	1,282	33,095	783	1,153	33,712	1,034
<b>% of total</b>	<b>89</b>	<b>51</b>	<b>37</b>	<b>86</b>	<b>45</b>	<b>31</b>
>100	162	31,191	1,339	184	40,514	2,358
<b>% of total</b>	<b>11</b>	<b>49</b>	<b>63</b>	<b>14</b>	<b>55</b>	<b>69</b>
<b>Total</b>	<b>1,444</b>	<b>64,286</b>	<b>2,122</b>	<b>1,337</b>	<b>74,226</b>	<b>3,393</b>

Source: DGR (2000) and OLGR (2007).

In the period shown above, there was an increase in concentration of gaming activity in clubs operating more than 100 machines – reflected in a disproportionate increase in their profits by 76%. The concentration was particularly evident in the biggest clubs – with a virtual doubling in the number of clubs operating over 300 machines (to 36 or 3% of the total) and in the number of machines they operated (to 15,865 or 21% of total machines) – and a 35% share of total profits.

### 3.4 Total size of the NSW gaming industry: clubs and hotels

The growth in the number of machines and in profits in clubs and hotels is shown below. As at 30 June 2009, NSW clubs and hotels operated a total of 95,605 gaming machines<sup>7</sup> and earned \$4,772m in profits.

**Table 7: Club and hotel gaming machines and profits 1957–2006.**

Year	Club GMs	Hotel GMs	Total GMs	Club profits \$m	Hotel profits \$m	Total profits \$m
1957	5,596	0	5,596	n.a.	0	n.a.
1964	14,107	0	14,107	60	0	60
1997	66,527	17,675	84,202	2,259	205	2,464
1998	67,518	25,113	92,631	2,376	611	2,987
2009	71,836	23,769	95,605	3,256	1,516	4,772

Note: Prior to 1997 hotels could only operate Approved Amusement Devices (AADs) – a simpler form of gaming machine than a poker machine. Since then (until recent years) machine numbers comprised both AADs and poker machines.

Source: DGR (2000) and OLGR (2007).

While accounting for 44% of total gaming machine venues, clubs operated 75% of the total machines.

<sup>7</sup> Although clubs only operate 'poker machines', the term 'gaming machines' or 'GMs' is used in tables and charts in this chapter since they include references to hotels which operate both poker machines and AADs.

#### **4. GAMBLING TAXES AND THE STATE BUDGET**

The NSW Government has also been a beneficiary of the growth in the gambling industry. In fact, it has been alleged that the NSW Government has been increasingly dependent on gambling revenue (particularly from gaming machines). The facts do not support this claim.

In 1987–88, the NSW Labor Government collected 10.3% of its ‘tax revenues’ from gambling. The Liberal/National Coalition came to office in March 1988. By the time it left office in March 1995, it was collecting a modestly higher 10.6% of its ‘tax revenues’ from gambling.

The Carr Labor Government came to office in March 1995. By the end of 1999–2000, the proportion of tax revenues collected from gambling had reduced from 10.6% to 10.3%. While the absolute amounts were greater under the Carr Government, all percentage increases were below those of the Coalition’s period in office, which was seven years compared with Labor’s five years in office up to June 2000.

Gambling revenues after 2000–01 incorporated the effects of the introduction of the GST – including the effect of the abolition of various state taxes (making figures not comparable with the years before) and new gaming duty increases from 2004. NSW gambling revenues after peaking at 9.55% in 2005–06 fell to 8.8% of total tax revenues by 2011–12 and are estimated to fall to 8.3% in 2013-14 (various NSW Budget Papers).

In summary, gambling has remained a significant source of NSW Government revenue, contributing over \$1.8m to the Budget in 2012-13. However, while it has increased in absolute value, contrary to claims, it has not increased in importance. In fact, as a proportion of total tax revenues it is less than 9%.

Moreover, NSW Government gambling revenue at \$1,870m in 2012-13 (and estimated at \$1,941m in 2013–14) is just over 3% of ‘total state revenues’ (2013-14 *Budget Paper No. 2*, pp. 6-10, 6-12).

Therefore, while gambling taxes are important to this state, this fact cannot be claimed, on its own, to explain the maintenance of the clubs’ privileged position.



## **5. CONCESSIONS UNDER STATE AND FEDERAL LAWS AND POLICIES RELATING TO GAMBLING**

### **5.1 Government policies have assisted clubs but at a cost to taxpayers**

Government policies have been at the centre of the growth in the economic significance of gambling and in the position which clubs have attained in that industry. These policies began with a state government granting clubs the right to operate poker machines. They then received favourable regulatory and (federal and state) tax treatment. While government has been a beneficiary of gambling activity through taxes, concessions to clubs have been at a significant cost to the taxpayer. This section details the growth and extent of this cost to both state and federal governments.

### **5.2 Mutuality principle adopted by the federal government**

While politicians adopted a rather general meaning of 'mutuality' as justification for the legalisation of poker machines in clubs and favourable tax treatment, the definition adopted for Commonwealth income tax purposes is somewhat more precise. According to the Australian Taxation Office (ATO):

The principle of mutuality provides that where a number of persons contribute to a common fund created and controlled by them for a common purpose, any surplus arising from the use of that fund for the common purpose is not income. This principle, of course, does not extend to include income that is derived from sources outside that group. Where the principle aim of a Club is to provide and improve facilities to its members, the principle of mutuality will apply to all transactions between that club and its members (ATO, *Guidelines for registered and licensed clubs*, 1992, p. 1).

The Productivity Commission added that the mutuality principle involves the idea that 'a person cannot make a profit from selling to him or herself' (1999, p. 21.3). And that the concept extends to 'defined groups of people who contribute to a common fund, controlled by the group for a common benefit' (1999, p. 21.3).

Common features of organisations accepted as having mutual income (clubs, societies and associations) include: participants or members usually not having property rights to their share in the common fund, nor being able to sell their share; losing their right to participate without receiving a financial benefit from surrendering of their membership; members paying a membership fee, and if prices charged for club services are greater than their cost, making additional contributions. These additional contributions are usually what constitute mutual income: upon dissolution of the club, surplus funds being donated to another club with similar interests and activities; the operations of the club falling within the ambit of state/federal laws governing clubs (Productivity Commission 1999, p. 21.3); and the club being a member of a recognised club association (ATO, 1992, pp. 1–2).

The effect of the application of the mutuality principle is to exempt from tax any revenues derived by a club from its members.

### **5.3 Federal income and corporate tax concessions**

#### ***Income tax exemptions***

Under the Australian *Income Tax Assessment Act 1997* many clubs are completely exempt from income tax. This applies to non-profit sporting clubs which can demonstrate that their main or dominant activity is the encouragement or promotion of sport (*Australian Income Tax Assessment Act 1997*, section 50-45).

Further, the ATO recognises what it refers to as 'non-profit' companies, which include clubs, societies or associations. For an organisation to be a 'non-profit' company, any profits made 'must be used to carry out its purposes. The profits must not be distributed to the members' (ATO, *Income tax guide for non-profit organisations*, 2004, p. 62). Payments may be made to its members 'as bona fide remuneration for services they have provided' and 'as reasonable compensation for expenses incurred on behalf of the organisation' (ATO, 2004, p. 62). The ATO's long-term practice is to allow taxable non-profit companies 'to rely on the mutuality principle so they can exclude certain receipts from their assessable income' (ATO, 2004, p. 64).

Accordingly, for income tax purposes, the ATO differentiates a club's receipts as: *mutual receipts*,<sup>8</sup> which are receipts derived from mutual dealing with members and which are not assessable income; and *assessable income*.<sup>9</sup> It also allows deduction of expenses in earning assessable income including costs of running a function solely for non-members, fees for earning bank interest or dividends, and costs of fundraising drives to the public (ATO, 2004, p. 66).

#### ***Cost of clubs' privileged income tax position***

As a result of the mutuality principle adopted by the ATO and the position taken by the federal government, clubs enjoy a privileged position in relation to income tax. Because sporting clubs are exempt from income tax and because tax is paid by other clubs only in respect of income derived from non-members and investments, net of allowable deductions, clubs overall pay little income tax. (This is in contrast to the corporate income tax paid by other companies.)

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<sup>8</sup> *Mutual receipts* include member subscriptions, payments for drinks sold at the bar to club members, amounts members pay to attend dinners, parties, dances or social functions organised by the club, and amounts members pay to attend a talk, workshop or presentation organised by the club (ATO, 2004, p. 65).

<sup>9</sup> *Assessable income* includes bank interest, dividends and other income from investments, proceeds from fundraising drives to the public, for example sale of lamingtons, cakes, or chocolates, payments for drinks sold at the bar to non-members visiting the club, fees received for hiring out the club's hall, facilities or equipment to the public, amounts non-members pay to attend dinners, parties, dances or social functions organised by the club, amounts non-members pay to attend a talk, workshop or presentation organised by the club, non-member proceeds from a raffle, proceeds of the sale of souvenirs to non-members, and gaming income derived by a club under arrangements entered into with an external gaming or keno operator (ATO, 2004, p. 65).

According to an estimate by the Productivity Commission (1999), the income tax forgone arising from the application of the mutuality principle to clubs was 'around \$100 million in 1997–98 ... principally from New South Wales clubs. Over time, this loss could be expected to grow. Moreover, the real loss of tax may be higher than this, as operating profits may be artificially low due to subsidised services' (*Australia's Gambling Industries*, p. 21.10).<sup>10</sup>

Since this estimate has not been updated by government agencies, some indicative estimates based on gaming profits have been calculated. Using an analysis undertaken in 2008 of the top 18 clubs by the number of machines, the 'Big 18 Clubs', it is apparent that club expense to revenue ratios are very high because of cross subsidisation and benefits provided to management and members. Accordingly, calculations have been undertaken on the basis of what is believed to be more appropriate ratios, as if clubs were operating on a more commercial basis.

In 2008–09 club gaming revenues totalled \$3,256m. Ignoring other revenues, and assuming expense to gaming profit ratios of 40%, 50%, 60%, and 80% and that income tax is paid on total profits (rather than just on profits attributable to non-members), then the income tax that might have been payable is as follows.

**Table 9: Cost of club income tax concessions**

Tax	40% Expense/GM profit ratio \$m	50% Expense/GM profit ratio \$m	60%Expense/GM profit ratio \$m	80% Expense/GM profit ratio \$m
2008–09 Club GM Profits	3,256	3,256	3,256	3,256
<u>Less</u> Operating Expenses	<u>1,302</u>	<u>1,628</u>	<u>1,954</u>	<u>2,605</u>
Net GM Profits	1,954	1,628	1,302	651
Income Tax @ Corporate Income Tax Rate of 30c in a \$	586	488	391	195

Source: Gaming machine (GM) profit, OLGR (2009); income tax rate, ATO.

Given that analysis of 18 of the biggest clubs showed that they paid a total of just \$5.7m income tax in 2005, this is unlikely to have increased materially since then. Clubs outside the 'Big 18 Clubs' would have paid even less tax (with many paying no tax). Hence, the cost to the Commonwealth Government in terms of income tax forgone as a result of the application of the mutuality principle to registered clubs, depending on their expense to gaming profit ratio, was at least \$195m and could have been nearly \$600m in 2009 (and even higher in subsequent years). These figures were based on gaming revenues only. They would have been even higher if other revenues were taken into account.

<sup>10</sup> An analysis of the 'Big 18 Clubs' demonstrates the low level of income tax paid by clubs and supports the notion that clubs' reported profits are artificially low due to the high level of expenditure and subsidised services that clubs provide (Betty Con Walker, 2009).

## **6. NSW GOVERNMENT TAX CONCESSIONS**

Because of the supposed 'mutual' status, and the belief that they provide contributions to the community, clubs for many years have received preferential tax treatment (and favourable regulatory treatment) from the NSW Government and particularly in comparison to their main competitors – hotels. The lower tax rates imposed on poker machines installed in clubs (relative to hotels) give rise to a large NSW Government subsidy.<sup>11</sup>

### **6.1 Club gaming state tax subsidy**

Amongst the many pages in the Budget Papers are to be found the costing of the tax concessions and concessional charges included in that year's Budget in a *Tax Expenditure and Concessions Statement*. Tax concessions – called tax expenditures – 'involve granting certain taxpayers, activities or assets more favourable tax treatment than applies to taxpayers in general' (2008–09 NSW Budget Paper No. 2, p. 5-1). Tax concessions are costed in terms of revenue forgone by the government.<sup>12</sup>

It is in that part of the Budget Papers that the NSW Government provides an estimate of the cost to the Budget of imposing lower tax rates on poker machines installed in clubs (relative to hotels), together with other tax expenditures. The subsidy to clubs is reflected in the 'gambling and betting taxes' category. It is now the fourth largest tax concession (and expected to be the third largest by the end of 2013-14) provided by the government.

### **6.2 Accumulated cost of the club gaming state tax subsidy**

The NSW Government's own costings of this club tax concession since the introduction of poker machines in hotels in April 1997 are shown below. The table shows that despite an increase in club tax rates from 1 September 2004, the government's overall tax concession to clubs continued to increase in value to \$489m in 2006–07. The fall to an estimated \$463m in 2007–08 is largely attributed to the impact of a ban on smoking in indoor areas of venues, which commenced from 1 July 2007 (2008–09 NSW Budget Paper No. 2, p. 4-22). These bans had a short-term impact on club and hotel patronage. Following the Coalition's reductions in club tax rates, the government subsidy to clubs was \$777m in 2012-13 and is estimated to increase to \$805m in 2013–14 (2013–14 NSW Budget Paper No. 2, pp. 6-25, D-21).

In other words, by the end of 2013–14, the NSW Government will be subsidising clubs to the tune of over \$800m annually, on this measure alone.

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<sup>11</sup> Club concessions extend to some mortgage duties (e.g. mortgage duty arising from the amalgamation, or dissolution of clubs or the formation of a new club), and land tax where a building is occupied by not-for-profit entities.

<sup>12</sup> Estimates of tax expenditures first appeared in the NSW Budget Papers in 1989–90 in response to a recommendation of the NSW Tax Task Force which reported in 1988. However, the more comprehensive annual Tax Expenditure Statements were first published in the 1998–99 Budget Papers (1998–99 NSW Budget Paper No. 2, pp. 9-1 to 9-29).

In 18 years, up to 2013–14, it is estimated that the NSW Government would have received additional tax revenue totalling \$8,856m – if it had imposed the same tax rates on clubs as it had on hotels. This compares with total estimated tax revenue received from clubs of \$10,157m over the same period. It may be said that the state could have received an additional 87% club tax revenue over this period.

Moreover, the benefit of club tax concessions (compared with hotels) is skewed to larger clubs. About 80% of the annual tax concession is received by only 20% of clubs. Almost half the value of the tax concession is received by only 5% of clubs (NSW Club and Hotel Taxation Working Group, *NSW Club Gaming Taxation Review and NSW Hotel Gaming Taxation Review*, 2001, p. xi). It is no surprise that the tax concessions provided by the government have led to the emergence of the 'big clubs'.

**Table 9: Gaming tax club subsidy 1996–97 to 2013–14**

Year	Government revenue from club gaming \$m	Cost of subsidy to government \$m	Subsidy as % of gambling & betting taxes %	Subsidy as % of club & hotel GM taxes %
1996–97	560	8.0	0.7	1.3
1997–98	520	337	25.0	50.2
1998–99	557	360	25.4	44.3
1999–00	596	384	24.5	40.2
2000–01	406	441	36.4	60.5
2001–02	404	431	35.6	59.6
2002–03	414	443	35.1	58.9
2003–04	435	463	35.3	58.4
2004–05	500	482	33.7	53.9
2005–06	569	488	32.1	49.5
2006–07	661	489	29.6	44.1
2007–08	595	463	30.0	46.0
2008–09	606	518	32.3	50.5
2009–10	640	579	33.9	54.4
2010–11	673	649	36.9	57.3
2011–12	660	739	40.7	64.3
2012–13	667	777	41.6	66.1
2013–14	694	805	41.5	65.4
<b>Total</b>	<b>10,157</b>	<b>8,856</b>		

Notes:

1. Data since 2000–01 reflects the introduction of the GST.

2. Data for 2012–13 and 2013–14 are estimates.

Source: NSW Budget Papers 1996–97 to 2013–14.

The subsidy as a proportion of total 'gambling and betting' taxes, and as a proportion of 'club and hotel gaming devices' taxes, fell after the Carr Government increased club tax rates from 1 September 2004. This trend was reversed when the then Premier Morris lemma froze the planned annual tax rate increases from 1 September 2006.

They have increased significantly since the Coalition Government's decisions to:

- reduce club tax rates; and
- increase the maximum tax rebate under the ClubGRANTS scheme from 1.5% to 1.85%. The ClubGRANTS scheme provides for a tax rebate of 1.85% which reduces the top marginal tax rate for clubs that earn more than \$1m in gaming machine revenue. The tax rebate is determined by the value of financial or in-kind contributions to local community programs and services as a percentage of club gaming profits.

These changes took effect from 1 September 2011 as shown in the table below.

**Table 10: Annual club gaming machine marginal tax rates**

Annual revenue range	Previous marginal tax rates	Marginal tax rates from 1 Sep 2011	Marginal tax rates after tax rebate (1)
0-\$200,000	0.0	0.0	0.0
\$200,000-\$1m (for clubs with revenue <\$1m) (2)	10.0	0.0	0.0
\$200,000-\$1m (for clubs with revenue >\$1m) (2)	10.0	10.0	0.0
\$1m-\$5m	21.0	19.9	18.5
\$5m-\$10m	26.0	24.4	22.55
\$10m-\$20m	29.0	26.4	24.55
\$20m plus	30.9	28.4	26.55

1. Rates incorporate the impact of the ClubGRANTS scheme tax rebate of 1.85% which reduces the top marginal tax rate for clubs that earn more than \$1m in gaming machine revenue.

2. For clubs earning gaming revenue above \$1m a year, the benefit of the extension of the tax-free threshold to \$1m will be withdrawn when revenue reaches \$1.8m.

Source: 2011-12 Budget Paper No. 2, pp. 5.5, 5.6.

### 6.3 Lack of scrutiny of the club gaming state tax subsidy

When the NSW Government first reported the cost of this club tax concession in its 1998–99 Budget Papers, it said that while tax expenditures were subject to scrutiny when first implemented, they were not subject to review subsequently and on an ongoing basis. It also stated that unless they are regularly reviewed, 'tax expenditures are more likely to outlive their original justification' (1998–99 NSW Budget Paper No. 2, p. 9-3).

It was explained that the publication of tax expenditures in a convenient consolidated form would contribute to a more complete picture of the state's fiscal policy and of resources devoted to particular functions. As such a Tax Expenditure Statement would 'improve transparency and better inform policy choices and public understanding of the Budget' (1998–99 NSW Budget Paper No. 2, p. 9-3).

This sentiment was repeated in subsequent Budget Papers which maintained that the publication of this information is:

to make the nature and estimated cost of tax expenditures and concessions more transparent in order to permit a more comprehensive assessment of NSW government activity (*2007–08 NSW Budget Paper No. 2*, p. 7-2).

Yet there does not appear to have been any subsequent review of the club tax subsidy, or commentary on the subsidy by Parliamentarians, or other interested parties. Searches of databases have not located media reports of the existence or extent of this subsidy. While Budget Papers publish the information, it is not highly visible to commentators or other stakeholders.

## 7. WHY CLUB CONCESSIONAL TREATMENT CONTINUES

Since 1956, the NSW club industry has retained its privileged position in receiving preferential treatment in tax and other areas. There are a number of possible explanations for this, particularly in relation to tax.

One is that there is a genuine belief on the part of politicians and others that clubs continue to be mutual organisations and are major financial contributors to the community. Reinforcing such beliefs have been club lobbying activities, combined with political donations, which have created an impression of clubs as political powerhouses and vote winners. The economic significance of the gambling industry to the state together with mythical impressions about the increasing reliance of the government on gambling revenues have further helped in the retention of the preferential treatment of the club industry.

Another possible explanation is more mundane: that what is 'out of sight' is 'out of mind'. Tax concessions are less visible than direct subsidies. The concessional tax treatment of clubs has not been the subject of detailed analysis by media or other interested parties.<sup>13</sup> Politicians may have ready access to Budget Papers, but these are voluminous and obscure documents, and it takes some skill and experience to read them and locate relevant information. In the absence of media commentary or briefings from public servants, many (if not most) politicians may well have been totally unaware of how clubs enjoyed major and significant tax breaks.

The facts are not consistent with some of these explanations.

The mutuality principle has already been discussed above as has the government's purported reliance on gambling as a revenue source. Other arguments include clubs as employers and as political donors. The more commonly held arguments involve club financial and other contributions to community organisations and club political power. All are overstated as some analysis below shows.

### 7.1 Clubs as community contributors

The rationale for the preferential tax and regulatory treatment of registered clubs has been, in addition to their 'mutual' status, the widely-held belief that they are major contributors of financial and other assistance to the community. Perceptions of clubs as significant contributors to the community may have influenced some politicians in continuing to support government preferential treatment of them.<sup>14</sup> Certainly the club industry has promoted this message.

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<sup>13</sup> One exception was that the Productivity Commission referred to the matter in a small part of a three volume report on Australia's gambling industries (1999).

<sup>14</sup> *Parliamentary Debates* contain many examples of well-meaning but sometimes exaggerated statements about club community contributions (e.g., Peter Breen, 3 May 2000, p. 5026; John Tingle, 3 May 2000, p. 5029; Karyn Paluzzano, 27 May 2003, p. 1202; Pam Allan, 27 May 2003, p. 1203; Tony Stewart, 27 May 2003, p. 1200; and Charlie Lynn, 28 October 2003, pp. 4163–65).



However, the evidence indicates that club contributions to community activities have been minimal and insignificant relative to their gaming revenues.

After taking into account the government subsidy received on community contributions under the CDSE Scheme,<sup>15</sup> clubs as a whole are distributing to the community cash amounting to less than 1% of their total gaming profits. In 2006 clubs earned \$3,393m in gaming profits and contributed some \$70m to the community. However, of the \$70m, clubs received almost \$40m back from the government as a tax rebate – meaning clubs contributed only \$30m or 0.9% of their gaming profits to the community. Moreover, assuming 15% of contributions were in-kind, the total cash spending by clubs from their own funds on the community in 2006 under the CDSE Scheme was less than \$20m or 0.6% of total gaming profits.

This situation does not seem to have changed since that analysis was carried out. According to ClubsNSW own website:

Last year, New South Wales clubs gave over \$92 million to not-for-profit community groups, charities and sports organisations through the ClubGRANTS scheme ... (ClubsNSW website accessed 4 March 2014).

When one takes account of the fact that:

- clubs receive about half of this back from the government as a tax subsidy; and
- up to 20%<sup>16</sup> of contributions can be 'in-kind' expenditure

cash community contributions by clubs are estimated at less than \$30m in 2013. That is, less than 1% of club gaming machine revenues.

This is reduced further, when taking account of the fact that some of these contributions actually go to clubs' own activities. According to ClubsNSW:

Category 2 [of the ClubGRANTS scheme] funding is focused on core club activities (such as an RSL supporting veterans welfare) and traditional areas of club expenditure, such as support for sport and recreation groups (ClubsNSW website accessed 4 March 2014).

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<sup>15</sup> As noted above, the Community Development and Support Expenditure (CDSE) Scheme involved a 1.5 percentage point reduction in the top state marginal tax rate for clubs if they contributed 1.5% of gaming machine profits in excess of \$1m to eligible community projects. This has been re-badged by the Coalition Government as the ClubsGRANTS scheme and the tax subsidy has been increased to 1.85%.

<sup>16</sup> The CDSE Scheme allowed for clubs to use in-kind assistance instead of cash in order to satisfy the 1.5% expenditure required to receive an equivalent tax rebate. A number of abuses of this provision surfaced. According to an anonymous source, a few clubs claimed 100% of their CDSE expenditure for in-kind services. For example, some were placing a commercial dollar value on the use of a club room for, say, the use by a group of elderly people to meet to play cards – when such a room would normally be empty. In addition, there were quite a few instances in which clubs were claiming in-kind expenditures for their in-house activities. Further, the percentage of in-kind claims was growing. Following a review of the scheme, the guidelines were revised. The new CDSE Guidelines which applied from the gaming machine tax year that commenced on 1 September 2007 limited the in-kind amounts to no more than 20% of the maximum rebatable amount (although clubs could apply for exemptions to this limit).

Arguably the greatest exaggeration on club contributions was from a government agency, the Independent Pricing and Regulatory Tribunal, which uncritically accepted data provided by the Allen Consulting Group (IPART, *Review of the Registered Clubs Industry in NSW*, 2008, p. 2). Allen's data was significantly inflated by assigning a dollar value to 'social contributions to their members' (e.g. providing members with access to facilities such as restaurants, bars, gaming rooms, bowling greens, golf courses, fitness centres, meeting rooms and conference facilities, as well as social welfare services) (IPART, 2008, p. 42).

On the basis of this questionable data, IPART 'estimated the value of clubs' contribution to social infrastructure in 2007 was \$811 million' (IPART, 2008, p. 3), which it calculated as shown in the table below.

**Table 11: IPART's estimate of the value of the club industry's 'direct social contribution' (2007)**

	<b>Industry values \$m</b>
Direct contributions	91
Direct in-kind contributions	
Market value of facilities	1,244
Less revenue received by clubs for their facilities	568
Volunteer hours	44
<b>Total value of social contributions</b>	<b>811</b>

Source: IPART 2008, p. 76.

One can only wonder how an 'independent' agency accepted such a figure. However, it did admit that its terms of reference were friendly to the club industry, and perhaps it was complying with government wishes to:

facilitate a sustainable industry and also acknowledge the valuable social and economic contribution registered clubs make to NSW's social infrastructure and services (IPART 2008, p. 20).

This was an agency which had an opportunity to look critically at this issue. Instead it relied on the clubs own consultants' data to conclude that 'the industry's social contribution is positive' (IPART 2008, p. 2). While it is useful to cost the value of facilities provided to club members (many of which, e.g., bowling greens and golf courses, are owned by government), describing them as 'contributions' helps clubs avoid the necessary responsibility of keeping a tight rein on spending their vast revenues.

Though it may not have been its intention, IPART did confirm the miniscule level of club cash contributions. This is evident in the \$91m direct cash contributions which went to the wider community as well as to in-house activities (although no breakdown is provided). Moreover, it did not take account of the \$40m in tax rebates received by clubs in 2007 under the CDSE Scheme (Department of the Arts, Sport and Recreation, Annual Report, 2007, p. 32). Taking the tax rebate into account means that, even on IPART's generous calculations, in 2007 the club industry's cash contributions (covering both in-house and to the wider community) totalled only \$51m.

Not surprisingly, ClubsNSW has selectively used those figures ever since and on its website it refers to the:

... clubs' \$1.2 billion contribution to the NSW community (ClubNSW website accessed 4 March 2014).

But surprisingly the then new Minister for Gaming and Racing (2008a) used the exaggerated IPART data stating:

It's estimated that the value of clubs' contribution to social infrastructure in NSW last year was \$811 million, highlighting how important these clubs are to our communities (Media Release, 26 September 2008).

The club industry has been successful in convincing politicians that it is a big community contributor mainly by involving local MPs in cheque 'handing-over ceremonies' and by publicising such contributions through the local media in newsletters and in annual reports. In this respect, ClubsNSW has advised clubs on tactics as follows:

Including the Mayor or your State and Federal MPs in your club's CDSE activities can emphasise to them the value of the Club Movement, the support your club provides to local organisations and the way the club enhances the lives of members and the general community. Why not write to your local members, detailing the contribution your club has made and inviting them to attend your CDSE cheque ceremony, President's reception or funding launch (ClubsNSW, *How to promote CDSE*, website accessed 9 January 2008).

ClubsNSW has been active in advising its members how to shape perceptions regarding the scale of community contributions through this Scheme. For example it provided advice to clubs as follows:

Holding events and putting out media releases to generate publicity is the return a club gets for its investment in the community. Not everyone knows about the enormous support clubs provide, so it's in clubs' best interests to promote this as much as possible. This doesn't necessarily involve large cost, many of these activities can be put together for very little cost (*ibid.*).

And ClubsNSW advised clubs to: 'Remember to make it clear that the money comes from clubs rather than from local or state government' (*ibid.*).

This advice appeared to be deceptive in view of the government tax rebate which clubs receive under the Scheme. ClubsNSW even helpfully provided sample media releases for the use of individual clubs.

An example of how 'things may not always be as they seem' was highlighted by Mark Day, one of the more independent columnists of *The Daily Telegraph*. It involved the actions of Penrith Panthers club during the Christmas-New Year bushfires of 2001–02. Apparently, the many hundreds of volunteers who were fighting the Blue Mountains fires 'were fed, watered and billeted at the Panthers' accommodation units':

Dozens of fire trucks were parked in its car park and club officials happily posed for photos as a cheque for a \$25,000 donation to the fire victims' appeal was handed over.

As a source who witnessed these events told me: 'They were very happy to see the firefighters and their equipment there because it gave the impression that the club was doing its bit for the community in this time of need' (*The Daily Telegraph*, 24 September 2003).

However, when it was all over, 'Panthers submitted their account to the fire authorities for the cost of food and accommodation':

The Rural Fire Service confirmed yesterday that it paid \$240,000 to Panthers for that emergency.

Now I don't say that Panthers should have not been paid for the services they provided throughout the crisis, but I do say this case illustrates that Panthers, like most big clubs, is first and foremost a business. Dollars, cents and the bottom line come before warm and wonderful community projects (*ibid.*).

## **7.2 Claims about clubs as electoral powerhouses**

One explanation for government and opposition politicians giving support to clubs is a belief that clubs wield significant political power. It is thought that club membership constitutes a significant block of voters which the industry is able to mobilise for or against political parties. However, some obvious tests in the last decade or so do not support such a contention.

### **1999 NSW election**

The main body representing NSW clubs tried its hand at electoral politics in 1999 when it formed a political party to contest the 1999 NSW election. The Registered Clubs Party received only 27,564 votes, 0.72% of the 3,832,356 votes cast in the election. In the same election, the One Nation Party received 225,668 votes and the Marijuana Smokers Rights Party also received more votes at 43,991. Even the What's Doing? Party received 18,318 votes (NSW Electoral Commission, 2007).

The failure of the Registered Clubs Party, and the less than 28,000 votes it received, should be seen in the context of claims by ClubsNSW that over 50% of NSW adults are members of clubs. It has variously claimed a club membership of 2.5 million to 2.7 million (ClubsNSW, *Fast Facts About Clubs*, 2006; *The Club Industry*, 2008).

The result should also be seen in the context of the fact that 'the 1999 State election may have been the high water mark of Legislative Council minor party success' (R. Smith, *Against the Machines: Minor Parties and Independents in*

*New South Wales 1910-2006*, 2006, p. 138). If the clubs could not get a candidate up then, when could they? It was a time when 264 individuals and 80 parties stood for office resulting in a ballot paper so large that it became known as 'the tablecloth election'. It was also a time when a number of single issue parties were successful including the Outdoor Recreation Party (ORP) led by Malcolm Jones and the A Better Future for Our Children (BFC) Party led by Alan Corbett (elected in the 1995 state election). The latter party had no formal constitution or members. Apparently, Corbett told people signing up for BFC that 'they were welcome to give him their ideas but that his party would have no formal structure' (*ibid.*, 2006, p. 187).<sup>17</sup>

### **2004 Dubbo by-election**

The 1999 election was the only one in which the Registered Clubs Party nominated candidates. However, the club industry had one more known attempt – albeit an indirect one – at electoral politics. This was in a by-election held in 2004 when it openly supported and funded the National Party candidate in the seat of Dubbo.

The by-election followed the death of Independent Member Tony McGrane. It was contested by the National Party, the Greens, one other Independent and the eventual winner Dawn Fardell, who kept the seat in Independent hands. Politicians and others have advised that the club industry provided extensive support to the National Party candidate but failed to influence that election.

Despite the allegedly significant resources contributed by the club industry to the National Party candidate, Fardell, the main Independent received an increase of nearly 17% in her votes giving her more than 50% of the primary vote and the seat. This was quite an achievement since she was the first female Independent to represent a rural seat in NSW. In the 2007 state election, the National Party candidate did better on first preference votes than Fardell, without the club industry's assistance – though the reduction in Fardell's vote was partly due to an unfavourable redistribution of the seat. In any case, Fardell still won after the distribution of preferences.

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<sup>17</sup> Following the 1999 State election, the 1912 *Parliamentary Electorates and Elections Act* was amended in order to introduce tougher tests for the registration of political parties (R. Smith, 2006, p. 187). By 30 June 2008, there were 14 parties registered (NSW Electoral Commission, 2008).

## **8. CONCLUSION**

There is a strong case for the NSW Government to modify its gaming tax concessions to the club industry.

The 2013-14 Budget Papers disclose that the value of that concession in 2013–14 is expected to be \$805m.

It is contended that if those concessions to the club industry were reduced or withdrawn, the moneys raised could be spent by the NSW Government on programs for the benefit of the wider community – such as health, education, or public transport. It is acknowledged that this may well reduce the capacity of the management of the big clubs to spend so much on entertainment, water features and Playboy architecture.

But the full or partial withdrawal of club subsidies would be more effective in promoting the public interest than the current arrangement of poorly-understood gaming tax concessions. After all governments through their budget processes are better equipped to determine community priorities than club boards.

Possibly some of the revenues raised by reductions in gaming tax concessions could be paid directly to clubs to support direct expenditure on genuine community activities. This would enhance transparency and ensure greater accountability: the payment of subsidies would be disclosed and evaluated as part of the budget process.

The current arrangement for club gaming tax concessions means that the benefits received by the 'Casino Clubs' are out of sight, and apparently, out of mind.